Franchise Tax Board

ANALYSIS OF AMENDED BILL

Author:	Committee on Budget	Analyst:	Gail Hall	Bill Number:	AB 1452
Related Bills:	See Legislative History	Telephone:	845-6111	Amended Date:	August 29, 2008
		Attorney:	Patrick Kusiak	Sponsor:	

SUBJECT:	Suspend NOLs 2008 & 2009/Allow 20-year Carryover Starting 2010/Tax Amnesty 2009

SUMMARY

Provisions of this bill would make the following changes:

- Suspend net operating loss deductions (NOLs) for 2 years, and make the NOL carryover period 20 years for losses incurred in taxable years beginning on or after January 1, 2010;
- Authorize the Franchise Tax Board to conduct a tax amnesty for the 2003 through 2006 tax years for corporation and personal income taxpayers.

This is the department's first analysis of the bill. The analysis addresses only those provisions of the bill that impact the Franchise Tax Board (FTB) and state income tax. The provisions of the bill will be discussed separately.

PURPOSE OF THE BILL

According to the language in the finding of urgency, the purpose of AB 1452 is to alleviate the current fiscal crisis in California.

EFFECTIVE/OPERATIVE DATE

As an urgency measure, this bill would go into immediate effect. The operative dates of these changes vary and will be addressed separately for each provision.

Board Position:			Department Director	Date
_______ S	_______ NA	_______ NP		
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_______ N	_______ OUA	___X___ PENDING		

ECONOMIC IMPACT SUMMARY

Revenue Impact of AB 1452 Suspension of NOL Deductions/20-Year Carryover/Amnesty Enactment Assumed before January 1, 2009				
	2007-08	2008-09	2009-10	2010-11
20-Year Carryover	No Revenue Impact Until 2021 (See discussion)			
Suspension of NOLs	-0-	+$1.090 Billion	+$600 Million	–$280 Million
Amnesty 2009	+$93 Million	- $ .036 Billion	–$ 55 Million	–$ 55 Million
Totals	+$93 Million	+$1.054 Billion	+$545 Million	–$335 Million

POSITION

Pending.

PROVISION NO. 1: SUSPEND NOLS/EXTEND CARRYOVER PERIOD

EFFECTIVE/OPERATIVE DATE

As an urgency statute, this provision would be effective immediately upon enactment and would be specifically operative as follows:

1. Suspension of NOLs: operative for taxable years beginning on or after January 1, 2008, and before January 1, 2010.
2. Extension of NOL carryover period to 20 years: operative for NOLs attributable to taxable years beginning on or after January 1, 2010.

ANALYSIS

FEDERAL LAW

When a taxpayer has an operating loss for the taxable year, the operating loss that may be used in subsequent years is called an NOL. An operating loss occurs when a taxpayer's allowed deductions exceed their gross income for that year. Federal law provides, in general, that an NOL can be carried back 2 years and forward 20 years and deducted. Special rules are provided for the carryback of NOLs relating to issues such as specified liability losses, casualty or theft losses, disaster losses of a small business, and farming losses.

STATE LAW

In general, a California taxpayer calculates its NOL in accordance with federal rules. Two important differences are that California does not allow the carryback of NOLs and limits the carryforward period to 10 years in circumstances where federal law allows 20 years. Depending on the type of taxpayer or amount of a taxpayer's income, the amount of NOL that is eligible to be carried forward and the number of years it can be carried forward will vary.
The taxpayer must make an election from the following list as to the type of NOL the taxpayer has incurred.

Existing state law provides for the following types of NOLs:

Type of NOL and Description	NOL % Allowed To Be Carried Over	Carryover Period (Current State Law)
General NOL	100%	10 Years
New Business NOL	100%	10 Years
Eligible Small Business	100%	10 Years
Specified Disaster Loss	100%	15 Years
Pierce's Disease	100%	9 Years
Economic Development Areas	100%	15 Years

THIS PROVISION

This provision applies to both the Personal Income Tax (PIT) law and the Corporation Tax Law (CTL), and would make the following changes:

- Disallow NOL deductions by suspending them for taxable years 2008 and 2009.
- Extend the NOL carryover period by one year for NOLs incurred in taxable year 2008, and two years for NOLs attributable to taxable years beginning before January 1, 2008.
- Allow a 20-year NOL carryover period for NOLs attributable to taxable years beginning on or after January 1, 2010.

TECHNICAL CONSIDERATIONS

The author may wish to consider amending the general NOL statutes[1] separately from the special California NOL statutes[2] relating to the 20-year carryover period. The general NOL provisions conform to federal law but modify the federal carryover period; the author may wish to consider limiting the application of this modification to achieve conformity with the federal 20-year carryforward period, with an operative date rule clarifying that the 20-year rule only applies to operating losses that arise in taxable years beginning on or after January 1, 2010. The new sections added by the bill regarding a 20-year carryover period should also be amended to delete reference to the general NOL statutes.

[1] Revenue and Taxation Code (R&TC) sections 17276(d)(1)(B) and 24416(e)(1)(B).
[2] R&TC sections 17276.1, 17276.2, 17276.4, 17276.5, 17276.6, 17276.7, 24416.1, 24416.2, 24416.4, 24416.5, 24416.6, and 24416.7.

OTHER STATES' INFORMATION

The states surveyed include *Florida*, *Illinois*, *Massachusetts*, *Michigan*, *Minnesota*, and *New York*. These states were selected due to their similarities to California's economy, business entity types, and tax laws.

- *Florida* income tax law, applicable only to corporations, provides a 20-year NOL carryover period.
- *Illinois* provides a 20-year NOL carryover period for personal income tax payers and a 12-year NOL carryover for corporations.
- *Massachusetts* income tax law disallows NOL treatment for personal income taxpayers, but corporations are allowed a five-year NOL carryover period.
- *Michigan* provides a 20-year NOL carryover period for personal income taxpayers and has a 10-year NOL carryover provision relating to the Michigan Business Tax.
- *Minnesota* provides a 20-year NOL carryover period for personal income taxpayers and a 15-year NOL carryover period for corporations.
- *New York* provides a 20-year NOL carryover period for both personal income taxpayers and corporations.

Research conducted on the above listed states found no years in which NOL deductions were suspended.

LEGISLATIVE HISTORY

AB 1370 (Lieber, 2007/2008) would have created a special category of NOL that would have been specific to bioscience activities and have a 20-year carryover period. AB 1370 did not pass both houses by the constitutional deadline.

AB 1147 (Mullin/Lieber, 2007/2008) would have allowed a bioscience corporation based in California to sell NOLs to another bioscience corporation that employed at least 500 employees in California. AB 1147 did not pass both houses by the constitutional deadline.

AB 2270 (Houston, 2005/2006) and AB 234 (Corbett, 2003/2004) would have allowed a 20-year NOL carryover for a taxpayer engaged in biopharmaceutical or other biotechnology business activities similar to this provision. AB 2270 and AB 234 did not pass both houses by the constitutional deadline.

AB 2065 (Oropeza, Stats. 2002, Ch. 488) suspended all deductions for NOLs for the 2002 and 2003 taxable years. The carryover period for losses incurred in 2002 was extended by one year. The carryover period for losses incurred prior to 2002 was extended by two years. In addition, AB 2065 provided that for taxable years beginning on or after January 1, 2004, the NOL carryover percentage would be 100% of the loss.

SB 169 (Alquist, Stats. 1991, Ch. 117) and AB 31 (Klehs, Stats. 1991, Ch. 474) suspended all deductions for NOLs for the 1991 and 1992 taxable years. The carryover period for losses incurred in 1991 was extended by one year. The carryover period for losses incurred prior to 1991 was extended by two years.

FISCAL IMPACT

This provision would not significantly impact the department's costs.

ECONOMIC IMPACT

Revenue Estimate

The revenue impact of 2008-09 suspensions of NOL deductions, under the assumptions discussed below, is estimated to be as follows:

Revenue Impact of AB 1452 Suspension of NOL Deductions for 2008 and 2009 Taxable Years Enactment Assumed before January 1, 2009			
	2008-09	2009-10	2010-11
20-Year Carryover	No Revenue Impact Until 2021 (See discussion)		
Suspension of NOLs	+$1.09 Billion	+$600 Million	–$280 Million

This analysis does not account for changes in employment, personal income, or gross state product that could result from this measure.

Revenue Discussion

Suspend NOLs for 2008 and 2009

The revenue impact of suspending the NOL deduction for taxable years 2008 and 2009 were estimated using company-level data and a micro-simulation model. For 2008, NOL deductions were projected to be $14 billion for corporation taxpayers and $3 billion for the PIT taxpayers. Using an average tax rate of 5.3%, disallowing NOL deductions would result in a revenue gain of approximately $900 million for the 2008 tax year [($14 billion + 3 billion) x .053 ≈ $900 million]. The numbers in the table above have been adjusted to reflect revenue estimates for fiscal years.

20-Year Carryforward

Because current state law allows 100% of unused NOLs to be carried forward for ten years, this provision would have no revenue impact for the first ten years. The first revenue impact of this bill would be in the eleventh year: 2021. Using company-level data and a micro-simulation model, it was estimated that $400 million of corporation and $80 million PIT NOLs generated in 2010 would now, under this provision, be carried forward to the eleventh year and would be used in 2021. Using an average tax rate of 5.3%, this would result in a combined revenue loss of approximately $25 million in 2021 [($400 million + $80 million) x .053 ≈ $25 million].

The amounts of NOL carryforwards would increase in subsequent years as losses generated in 2011 and beyond are incurred. Taking into account the losses generated after 2010, the sum of all the losses carried forward to 2030 would reach $2 billion for corporations and $400 million for the PIT taxpayers. At an average tax rate of 5.3%, this would result in a revenue loss of approximately $127 million in that year [($2 billion + $400 million) x .053 ≈ $127 million].

PROVISION NO. 2: AMNESTY 2009

EFFECTIVE/OPERATIVE DATE

As an urgency statute, the amnesty provision of this bill would be effective and operative immediately upon enactment, with the tax amnesty itself to be specifically conducted during the period beginning on February 1, 2009, for taxable years 2003 through 2006.

ANALYSIS

FEDERAL LAW

Federal law does not provide for a comparable amnesty program.

STATE LAW

Under the state PIT law or CTL, numerous penalties may be imposed against individuals and corporate taxpayers that fail to report or underreport income. Additionally, certain penalties are imposed against third parties that assist taxpayers in the nonreporting or underreporting of income. Certain fees are imposed against taxpayers that fail to file returns or pay their tax liabilities. Appendix A provides details regarding these fees and penalties.

Taxpayers that fail to report or underreport their income may be subject to criminal prosecution and sanctions. Depending upon the gravity of the offense, such taxpayers may be guilty of either a misdemeanor or felony. Upon conviction, such taxpayers are subject to fines or imprisonment or both, together with costs of investigation and prosecution.

When a taxpayer fails to file an income tax return, there is no statute of limitations for enforcing the filing requirement. If a taxpayer fails to report or underreport income, FTB has the authority to estimate the net income of that taxpayer from any available information. When the tax liability is determined based on the estimate of net income, FTB may issue a notice of proposed deficiency assessment (NPA) for the additional tax, penalties, and interest.

THIS PROVISION

This provision would authorize FTB to conduct a tax amnesty for taxpayers subject to PIT law and CTL that would provide an opportunity for eligible taxpayers to receive a penalty or fee waiver for unpaid penalty and fee amounts assessed on the 2003 through 2006 taxable years. FTB would accept applications for amnesty starting February 1, 2009, and ending March 27, 2009, with all returns and payments required to be filed and made by June 1, 2009.

The following taxpayers would not be eligible to participate in tax amnesty under this bill:

- Taxpayers who have had criminal complaints filed against them.
- Taxpayers who are under criminal investigation.
- Taxpayers with non-reported or underreported tax liability amounts attributable to a potentially abusive tax avoidance transaction, as defined.

Eligible taxpayers would be required to file a completed tax amnesty application within the amnesty filing period electing to participate in the tax amnesty and by June 1, 2009, do all of the following (as applicable):

- File a complete original tax return for any taxable year eligible for amnesty for which the taxpayer has not filed a return.
- File an amended return for any taxable year eligible for amnesty where the taxpayer underreported income on the original tax return.
- Pay in full any taxes and interest due for each taxable year for which amnesty is requested, or apply for an installment payment agreement.
- Pay in full any tax and interest amounts previously proposed to be assessed.

Taxpayers who are under the jurisdiction of a federal bankruptcy court would be authorized to participate in tax amnesty if they submit an order from a federal bankruptcy court that allows them to participate.

Taxpayers currently in an installment payment agreement would be exempt from the amnesty penalty on those amounts covered by the existing installment payment agreement if they choose not to participate in tax amnesty, but could elect to participate in amnesty to waive any unpaid penalty or fees. If such a taxpayer elected to participate in tax amnesty, the provision exempting them from the amnesty penalty would no longer apply.

Taxpayers that enter into an installment payment agreement under tax amnesty would be given until June 30, 2010, to pay any amount of tax and interest in full. If a taxpayer failed to meet this requirement, the amount of any penalties and fees that were waived would be restored, unless FTB determined the failure was due to reasonable cause and not willful neglect. The total amount of tax, penalty, fee, and interest would also become immediately due and payable if such a failure to pay in full occurred.

This provision would authorize FTB to prescribe the form of the tax amnesty application and would require FTB to conduct an education and outreach effort to inform as many eligible taxpayers as possible through a streamlined process. The provisions would authorize FTB to issue forms, instructions, notices, rules, or guidelines to implement the tax amnesty and would provide an exception to the Administrative Procedures Act for this purpose.
The provisions would authorize, in addition to any other applicable penalty, an amnesty penalty to be added to the tax for amounts in each taxable year for which amnesty could have been requested that would be calculated as follows:

1. For amounts that are due and payable on the last day of the tax amnesty period, an amount equal to 50 percent of the accrued interest payable for the period beginning on the last date prescribed by law for the payment of that tax and ending on the last day of the tax amnesty period.
2. For amounts that are due and payable after the last day of the tax amnesty period, an amount equal to 50 percent of the interest computed for the period beginning on the last date prescribed by law for the payment of the tax for the year of the deficiency and ending on the last day of the tax amnesty period.

Tax deposits made before the end of the tax amnesty period would reduce the amount on which the amnesty penalty is computed. Any audit assessment or filing enforcement assessment where FTB first contacted the taxpayer in writing in connection with that assessment before March 27, 2009, if that assessment was not final before March 27, 2009, would not be subject to the amnesty penalty.

The provisions would provide that a refund or credit for any amounts paid to satisfy a penalty imposed under this section may be allowed only on the grounds that the amount of the penalty was not properly computed. Additionally, no refunds would be allowed on amounts paid pursuant to tax amnesty.

The provisions would reiterate existing law regarding when amounts are due and payable, except for final deficiency assessments issued on amnesty-eligible years after the tax amnesty period expires. In the case of these latter assessments, no amnesty penalty would apply to the portion of the deficiency assessment paid within 15 days from the date the notice and demand for payment is issued by FTB.

Upon conclusion of the tax amnesty period, this bill would authorize FTB to do the following with respect to the difference between the amount shown on the income tax return and the correct amount of tax:

- Propose a deficiency upon any return filed,
- Impose penalties and fees, or
- Initiate criminal action against the taxpayer.

IMPLEMENTATION CONSIDERATIONS

These provisions grant an exception to the application of the amnesty penalty for assessments attributable to a filing enforcement assessment when FTB has contacted the taxpayer in writing before March 27, 2009, regarding the assessment that has not gone final prior to March 27, 2009, for the amnesty taxable years. It is unclear, however, if the taxpayer were to file an original tax return after the end of the tax amnesty period, whether the original tax return amounts would receive an amnesty penalty because the original tax return amounts are not necessarily amounts attributable to the filing enforcement assessment. This could encourage taxpayers to pay filing enforcement assessments in lieu of filing a return to avoid the application of the amnesty penalty for those amnesty taxable years, which is contrary to the general policy of requiring taxpayers to file self-assessed tax returns. To resolve this issue, the exception should be amended to provide that the amnesty penalty would also not apply to amounts shown on an original tax return filed after the tax amnesty period expires that are attributable to the filing enforcement assessment that was issued on the eligible tax amnesty year and was not final prior to March 27, 2009.

Implementing this provision would have a significant impact on the department, as discussed below under Fiscal Impact. The department anticipates being able to administer the tax amnesty conditioned upon funding in the 2008/2009 Budget Act. However, if the 2008/2009 Budget Act is delayed past October 15, 2008, FTB would not have sufficient time to make the necessary system and processing changes, education and outreach and marketing efforts, or notify eligible taxpayers of the tax amnesty to meet the intended tax amnesty start date of February 1, 2009.

TECHNICAL CONCERN

The provisions in this bill that apply to deficiency assessments with respect to amnesty years, where those deficiency assessments are issued after the conclusion of the tax amnesty period, permit a taxpayer who pays the deficiency amount within 15 days of receiving a final notice of tax due from FTB to avoid the tax amnesty penalty completely. This provision contradicts other language within the bill that states payments made after the end of the tax amnesty period cannot eliminate or reduce the amount of the amnesty penalty. Assuming the author's intent is to provide a 15-day grace period to pay before the amnesty penalty is applied, the conflicting text should be revised.

LEGISLATIVE HISTORY

AB 2326 (Walters, 2006) would have provided relief to certain taxpayers with respect to the 2005 income and franchise tax amnesty as follows:

1. Allow taxpayers to request Chief Counsel review for relief of the amnesty penalty if certain criteria were met.
2. Convert the existing post-amnesty penalty to increased interest for liabilities that became final after the end of amnesty.
3. Eliminate the amnesty penalty on balance due amounts that were generated as a result of a post-amnesty change in interpretation or application of law.
4. Change the rate of interest for corporate taxpayers that filed protective claims in lieu of participating in amnesty so that any overpayment would bear the same interest rate imposed on underpayments.
5. Eliminate all or a portion of the amnesty penalty for taxpayers that made protective claim payments for anticipated additional post-amnesty tax liabilities.

This bill was held in the Assembly Appropriations Committee.

AB 911 (Chu, Stats. 2005, Ch. 398) addressed certain unintended consequences of the 2005 income and franchise tax amnesty administered by the department as follows:

1. Allowed underpayments for amnesty-eligible years to be offset by overpayments from other years for purposes of computing the amnesty penalty.
2. Established a 20-year statute of limitations to collect income or franchise tax balances due from taxpayers, and thereafter extinguished the liability to pay such balances by abating the remaining amounts due.
3. Allowed the FTB to extinguish certain inactive taxpayer debts.
4. Repealed the provision of law that required taxpayers that participated in amnesty to pay any tax due for the 2005 and 2006 taxable years to avoid having the benefits of amnesty revoked and the amnesty penalty imposed.
5. Made technical clarifications of certain amnesty provisions..

AB 1614 (Klehs, 2005), as introduced, would have provided relief to certain taxpayers with respect to tax amnesty administered by FTB. The provisions related to amnesty were later amended out of the bill.

SB 1100 (Senate Budget Committee Ch. 226, Stats. 2004) enacted a tax amnesty for taxpayers that failed to file income tax returns, underreported income on a previously filed income tax return, or failed to pay any taxes previously assessed.

AB 2203 (Chu, 2004) would have provided for tax amnesty similar to the amnesty ultimately enacted by SB 1100. This bill was held in the Senate Revenue and Taxation Committee.

SB 1439 (Oller, 2001/2002) would have created a tax penalty amnesty for certain taxpayers that had not reported or had underreported their income taxes. This bill was held in the Assembly Appropriations Committee.

AB 3230 (Hannigan, Stats. 1984, Ch. 1490) provided for an amnesty for individual taxpayers relating to the nonpayment and underreporting of tax or the nonpayment of any previously assessed tax.

OTHER STATES' INFORMATION
According to information furnished by the Federation of Tax Administrators, as of July 2007, 7 states repeated an amnesty within 5 years of a previous amnesty program. The criteria each state set for its amnesty, including period of amnesty filing, taxes involved, and how penalties were waived or assessed, varies. For additional information, Appendix C provides a chart of the past and current amnesties administered by other states. The chart is from the website of the Federation of Tax Administrators at www.taxadmin.org.

FISCAL IMPACT

Conducting a tax amnesty as required by this provision would require a significant effort by FTB to implement. FTB estimates it would need additional funding over three fiscal years to process the amnesty applications; make system changes and account adjustments; provide customer service support; and develop and conduct an education, outreach, and marketing plan for tax amnesty. Because of the magnitude of the effort this provision would require, FTB would need a budget augmentation in the current fiscal year, and in the next two fiscal years, to conduct a tax amnesty. FTB estimates a total cost of $17.9 million, broken out by fiscal year as follows:

Tax Amnesty 2009	**Cost**	**PYs**[3]
Current year 08/09	$8,000,000	45.2
Budget year 09/10	$5,408,000	72.6
Budget year 10/11	$4,572,000	59.8
Total	**$17,980,000**	**177.6**

A tax amnesty could not be conducted without a budget augmentation sufficient to cover these costs without significantly impacting the other revenue generating activities for which FTB is responsible.

ECONOMIC IMPACT

Based on data and assumptions discussed below, this proposal would result in the following revenue gains and losses beginning in fiscal year 2007-08.

Estimated Revenue Impact of AB1452 Amnesty 2009			
2007-08	2008 -09	2009-10	2010-11
+$93 Million	-$36 Million	-$55 Million	-$55 Million

This analysis does not account for changes in employment, personal income, or gross state product that could result from this measure.

Revenue Discussion:

The revenue impact of the proposal would be dependent upon the following:

1. The number of taxpayers and business entities that participate and pay their outstanding amnesty eligible tax and interest by March 27, 2009, or by June 30, 2010, with an amnesty installment agreement;
2. The amount of fees, penalties, and interest on those penalties that are forgiven;
3. The amount of post amnesty penalties assessed and paid; and
4. The amount of tax deposits made to avoid potential amnesty penalties.

[3] Personnel Years

Based on the 2005 amnesty effort, it is assumed that 29% of the delinquent PIT accounts and 2% of delinquent Business Entity accounts with tax liabilities for one or more of the tax amnesty eligible years, 2003 through 2006, would make accelerated payments of tax and interest due.

After netting the assessed and forgiven penalties, interest on those penalties, and fees, there would an estimated $93 million acceleration of revenue for fiscal year 2008-09, resulting in estimated losses of $36 million for fiscal year 2009-10 and $55 million in fiscal years 2010-11 through 2014-15. It is estimated that $115 million in amnesty penalties will be assessed and 2%, or $3 million, will be paid each year beginning in fiscal year 2010-11. All of these estimates are accrued back one year in the table because the revenue relates to prior taxable years.

It is assumed that taxpayers would not make tax deposits to avoid potential amnesty penalties because the August 29, 2008, amendments would allow taxpayers to make payments within 15 days of receiving the final notice of tax due from FTB to avoid the Amnesty penalties instead of making the tax deposits before the Amnesty period ends to avoid penalties. In addition, it is estimated that $91 million in amnesty penalties will not be assessed due to tax deposits being paid after the Amnesty period but within 15 days of receiving the final notice of tax due from FTB.

As discussed above in the Technical Concern section, the provisions in this bill that apply to deficiency assessments with respect to amnesty years, where those deficiency assessments are issued after the conclusion of the tax amnesty period, permit a taxpayer who pays the deficiency amount within 15 days of receiving a final notice of tax due from FTB to avoid the tax amnesty penalty completely. This provision contradicts other language within the bill that states payments made after the end of the tax amnesty period cannot eliminate or reduce the amount of the amnesty penalty. Assuming the author's intent is to provide a 15-day grace period to pay before the amnesty penalty is applied, the conflicting text should be revised.

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APPENDIX A
TAX AMNESTY PROVISION
PENALTY AND FEE INFORMATION

Commonly Imposed Penalties

The following are the more commonly imposed penalties under current income tax laws against taxpayers that do not report or underreport their income, or do not pay deficiency assessments:

- Late filing – income tax returns that are filed late are subject to a late filing penalty that is: (1) a basic penalty of 5% of the unpaid tax per month that the return is late, up to a maximum of 25% of the tax, or (2) a minimum penalty of the lesser of $100 or 100% of the tax liability, if the return is filed 60 days or more late and the basic penalty is less than $100. If the failure to file is due to fraud, the basic penalty is 1% per month, up to a maximum of 75%.
- Underpayment – income taxes that are not paid by the original due date of the income tax return are subject to a penalty of 5% of the unpaid tax PLUS 1/2 of 1% per month, up to a maximum of 40 months (20%).
- Demand – income tax returns that are not filed upon notice and demand from the FTB are subject to a penalty of 25% of the amount of the tax required to be shown on the return.
- Frivolous return – income tax returns that are not sufficiently completed to substantially determine the correct self-assessed tax are subject to a penalty of $500.
- Accuracy-related – negligence or disregard of rules or regulations, substantially understating income tax, overstating values of items, or overstating pension liabilities are subject to a penalty of 20% of the underpayment amount. If the misstatements are due to fraud, the penalty is 75% of that resulting tax.
- Corporate Penalties Relating To Doing Business- Corporations that are doing business in California while out of compliance with the tax laws are subject to the following penalties that may be significant:
  -If a corporation's rights, powers, and privileges are suspended or forfeited for failure to file an income or franchise tax return or pay the tax, the corporation's contracts are voidable. To be relieved of voidability, the corporation must be brought to full compliance with the tax laws by filing all past due returns and payment of all past due tax amounts and pay an additional penalty of $100 for each day that voidability relief is being sought (not to exceed the tax amount).
  -Certain corporations that are doing business in California while their privileges are suspended or forfeited for nonpayment of tax or nonfiling of returns are subject to a $2,000 penalty per tax year.
- Enforcement Fees- Taxpayers that fail to file returns or pay their income or franchise tax liabilities during fiscal year 2007-08 may be liable for the following fees relating to the enforcement of the income or franchise tax return or liability:
  -$122 for individuals and $305 for corporations that fail to file income or franchise tax returns within 25 days after FTB mails its formal legal demand for the returns.
  -$155 for individuals and $234 for corporations that fail to pay their income or franchise taxes after FTB mails its notice for payment that advises that continued nonpayment may result in collection action.

- Third-Party Penalties Third parties that assist taxpayers in their failure to comply with the income tax laws may be subject to the following penalties:
  -Tax preparers who understate a taxpayer's tax liability on any return are subject to a $250 penalty, which increases to $1,000 if the understatement is a result of willful or reckless conduct.
  - Persons who aid and abet a taxpayer in understating the taxpayer's tax liability are generally subject to a penalty of $1,000 per taxpayer for each year.

Appendix B

Tax Amnesty Provision

State Tax Amnesty Programs
November 22, 1982 -- Present

STATE	AMNESTY PERIOD	LEGISLATIVE AUTHORIZATION	MAJOR TAXES COVERED	ACCOUNTS RECEIVABLE INCLUDED	Collections ($ Millions) (a)	INSTALLMENT ARRANGEMENTS PERMITTED (b)
ALABAMA	1/20/84 - 4/1/84	No (c)	All	No	3.2	No
ARIZONA	11/22/82 - 1/20/83	No (c)	All	No	6.0	Yes
	1/1/02 - 2/28/02	Yes	Ind. Income	No		No
	9/1/03 - 10/31/03	Yes	All (t)		73.0	Yes
ARKANSAS	9/1/87 - 11/30/87	Yes	All	No	1.7	Yes
	7/1/04 - 12/31/04	Yes	All			No
CALIFORNIA	12/10/84 - 3/15/85	Yes	Ind. Income	Yes	154.0	Yes
		Yes	Sales	No	43.0	Yes
	2/1/05 - 3/31/05	Yes	Income, Franchise, Sales			Yes
COLORADO	9/16/85 - 11/15/85	Yes	All	No	6.4	Yes
	6/1/03 6/30/03		All		18.4	Yes
CONNECTICUT	9/1/90 - 11/30/90	Yes	All	Yes	54.0	Yes
	9/1/95 - 11/30/95	Yes	All	Yes	46.2	Yes
	9/1/02 - 12/2/02		All		109.0	
FLORIDA	1/1/87 - 6/30/87	Yes	Intangibles	No	13.0	No
	1/1/88 - 6/30/88	Yes (d)	All	No	8.4 (d)	No
	7/1/03 - 10/31/03	Yes	All		80.0	
GEORGIA	10/1/92 - 12/5/92	Yes	All	Yes	51.3	No
IDAHO	5/20/83 - 8/30/83	No (c)	Ind. Income	No	0.3	No
ILLINOIS	10/1/84 - 11/30/84	Yes	All(u)	Yes	160.5	No
	10/1/03 - 11/17/03	Yes	All		532.0	
INDIANA	9/15/05 - 11/15/05		All		255.0	Yes
IOWA	9/2/86 - 10/31/86	Yes	All	Yes	35.1	
	9/4/07 - 10/31/07	Yes	All	Yes		
KANSAS	7/1/84 - 9/30/84	Yes	All	No	0.6	No
	10/1/03 - 11/30/03	Yes	All	Yes	53.7	
KENTUCKY	9/15/88 - 9/30/88	Yes (c)	All	No	100.0	No
	8/1/02 - 9/30/02	Yes (c)	All	No	100.0	No
LOUISIANA	10/1/85 - 12/31/85	Yes	All	No	1.2	Yes (f)
	10/1/87 - 12/15/87	Yes	All	No	0.3	Yes (f)
	10/1/98 - 12-31-98	Yes	All	No (q)	1.3	No
	9/1/01 - 10/30/01	Yes	All	Yes	173.1	No
MAINE	11/1/90 - 12/31/90	Yes	All	Yes	29.0	Yes
	9/1/03 11/30/03	Yes	All		37.6	
MARYLAND	9/1/87 - 11/2/87	Yes	All	Yes	34.6 (g)	No

	9/1/01 - 10/31/01	Yes	All	Yes	39.2	No
MASSACHUSETTS	10/17/83 - 1/17/84	Yes	All	Yes	86.5	Yes (h)
	10/1/02 - 11/30/02	Yes	All	Yes	96.1	Yes
	1/1/03 2/28/03	Yes	All	Yes	11.2	
MICHIGAN	5/12/86 - 6/30/86	Yes	All	Yes	109.8	No
	5/15/02 - 6/30/02	Yes	All	Yes		
MINNESOTA	8/1/84 - 10/31/84	Yes	All	Yes	12.1	No
MISSISSIPPI	9/1/86 - 11/30/86	Yes	All	No	1.0	No
	9/1/04 - 12/31/04	Yes	All	No	7.9	No
MISSOURI	9/1/83 - 10/31/83	No (c)	All	No	0.9	No
	8/1/02 - 10/31/02	Yes	All	Yes	76.4	
	8/1/03 - 10/31/03	Yes	All	Yes	20	
NEBRASKA	8/1/04 - 10/31/04	Yes	All	No	7.5	No
NEVADA	2/1/02 - 6/30/02		All		7.3	
NEW HAMPSHIRE	12/1/97 - 2/17/98	Yes	All	Yes	13.5	No
	12/1/01 2/15/02	Yes	All	Yes	13.5	
NEW MEXICO	8/16/99 - 11/12/99	Yes	All	Yes	45	Yes
NEW JERSEY	9/10/87 - 12/8/87	Yes	All	Yes	186.5	Yes
	3/15/96 - 6/1/96	Yes	All	Yes	359.0	No
	4/15/02 - 6/10/02	Yes	All	Yes	276.9	
NEW MEXICO	8/15/85 - 11/13/85	Yes	All (i)	No	13.6	Yes
NEW YORK	11/1/85 - 1/31/86	Yes	All (j)	Yes	401.3	Yes
	11/1/96 - 1/31/97	Yes	All	Yes	253.4	Yes (o)
	11/18/02 - 1/31/03	Yes	All	Yes	582.7	Yes (s)
	10/1/05 - 3/1/06		Income, Corporate		349	
NEW YORK CITY	10/20/03 - 1/23/04	Yes	All (v)	Yes (w)		No
NORTH CAROLINA	9/1/89 - 12/1/89	Yes	All (k)	Yes	37.6	No
NORTH DAKOTA	9/1/83 - 11/30/83	No (c)	All	No	0.2	Yes
	10/1/03 - 1/31/04	Yes			6.9	
OHIO	10/15/01 - 1/15/02	Yes	All	No	48.5	No
	1/1/06 - 2/15/06	Yes	All	No	63.0	No
OKLAHOMA	7/1/84 - 12/31/84	Yes	Income, Sales	Yes	13.9	No (l)
	8/15/02 - 11/15/02		All (r)	Yes		
PENNSYLVANIA	10/13/95 - 1/10/96	Yes	All	Yes	n.a.	No
RHODE ISLAND	10/15/86 - 1/12/87	Yes	All	No	0.7	Yes
	4/15/96 - 6/28/96	Yes	All	Yes	7.9	Yes
	7/15/06 - 9/30/06		All	Yes	6.5	Yes
SOUTH CAROLINA	9/1/85 - 11/30/85	Yes	All	Yes	7.1	Yes
	10/15/02 - 12/2/02	Yes	All	Yes	66.2	
SOUTH DAKOTA	4/1/99 - 5/15/99	Yes	All	Yes	0.5	
TEXAS	2/1/84 - 2/29/84	No (c)	All (m)	No	0.5	No

	3/11/04 - 3/31/04	No (c)	All (m)	No		No
	6/15/07 - 8/15/07	No (c)	All (m)	No		No
VERMONT	5/15/90 - 6/25/90	Yes	All	Yes	1.0 (e)	No
VIRGINIA	2/1/90 - 3/31/90	Yes	All	Yes	32.2	No
	9/2/03 - 11/3/03	Yes	All	Yes	98.3	
WEST VIRGINIA	10/1/86 - 12/31/86	Yes	All	Yes	15.9	Yes
	9/1/04 - 10/31/04	Yes	All		10.4	Yes
WISCONSIN	9/15/85 - 11/22/85	Yes	All	Yes (n)	27.3	Yes
	6/15/98 - 8/14/98	Yes	All	Yes	30.9	
DIST. OF COLUMBIA	7/1/87 - 9/30/87	Yes	All	Yes	24.3	Yes
	7/10/95 - 8/31/95	Yes	All (p)	Yes	19.5	Yes (p)
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS *(U.S. Jurisdiction)*	9/30/05 - 3/30/06	Yes	All			

Source: *The Federation of Tax Administrators*, http://www.taxadmin.org/fta/rate/amnesty1.html.

(a) Where applicable, figure includes local portions of certain taxes collected under the state tax amnesty program.
(b) "No" indicates requirement of full payment by the expiration of the amnesty period. "Yes" indicates allowance of full payment after the expiration of the amnesty period.
(c) Authority for amnesty derived from pre-existing statutory powers permitting the waiver of tax penalties.
(d) Does not include intangibles tax and drug taxes. Gross collections totaled $22.1 million, with $13.7 million in penalties withdrawn.
(e) Preliminary figure.
(f) Amnesty taxpayers were billed for the interest owed, with payment due within 30 days of notification.
(g) Figure includes $1.1 million for the separate program conducted by the Department of Natural Resources for the boat excise tax.
(h) The amnesty statute was construed to extend the amnesty to those who applied to the department before the end of the amnesty period, and permitted them to file overdue returns and pay back taxes and interest at a later date.
(i) The severance taxes, including the six oil and gas severance taxes, the resources excise tax, the corporate franchise tax, and the special fuels tax were not subject to amnesty.
(j) Availability of amnesty for the corporation tax, the oil company taxes, the transportation and transmissions companies tax, the gross receipts oil tax and the unincorporated business tax restricted to entities with 500 or fewer employees in the United States on the date of application. In addition, a taxpayer principally engaged in aviation, or a utility subject to the supervision of the State Department of Public Service was also ineligible.
(k) Local taxes and real property taxes were not included.
(l) Full payment of tax liability required before the end of the amnesty period to avoid civil penalties.
(m) Texas does not impose a corporate or individual income tax. In practical effect, the amnesty was limited to the sales tax and other excises.
(n) Waiver terms varied depending upon the date of tax liability was accessed.
(o) Installment arrangements were permitted if applicant demonstrated that payment would present a server financial hardship.
(p) Does not include real property taxes. All interest was waived on tax payments made before July 31, 1995. After this date, only 50% of the interest was waived.
(q) Exception for individuals who owed $500 or less.
(r) Except for property and motor fuel taxes.
(s) Multiple payments can be made so long as the required balance is paid in full no later than March 15, 2003.
(t) All taxes except property, estate and unclaimed property.

(u) Does not include the motor fuel use tax.
(v) All NYC taxes administered by the NYC Dept. of Finance are covered except for Real Estate Tax. NYC Sales & Use Tax & NYC Resident Personal Income Tax also are not covered because they are administered by the NYS Dept. of Taxation & Finance.
(w) Taxpayers under audit as of 3/10/03 are ineligible; Taxpayers with an existing installment agreement are ineligible; Taxpayers under criminal investigation are ineligible; Taxpayers party to an administrative or court proceding must withdraw as a condition of amnesty.

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